



Advanced Training

ICC Institute Masterclass for Arbitrators

Overview of fundamentals and best practices
related to serving as an Arbitrator

Paris, 15 - 17 March 2010

UNDER THE AUSPICES OF THE ICC INSTITUTE OF WORLD BUSINESS LAW

Chairman of the ICC Institute of World Business Law:

Serge Lazareff, Avocat à la Cour, France

Chairman of the Masterclass:

Phillip Capper, Partner, White & Case LLP, United Kingdom;
Member, Task Force on the Revision of the ICC Rules,
Associate Member, ICC Institute of World Business Law

PROGRAMME

Monday 15 March 2010

MORNING

09.30 - 10.00 **Arbitrator: who are you?**

This session will examine the role of the arbitrator, the contractual basis of the relationship and the major differences between a sole arbitrator, co-arbitrator, and the chairman.

- **Serge Lazareff**, Avocat à la Cour, France

10.00 - 10.30 **Appointment of arbitrators**

The appointment of arbitrators starts with a selection process which often involves various issues, including the interview process (what areas are appropriate topics for discussion and which ones are off limits), the initial disclosures and conflict checks. How should a potential arbitrator deal with these issues? What do the concepts of impartiality and independence require in concrete terms and what types and level of disclosures are required? How is the chairman selected by the co-arbitrators? Is the IBA Code of Ethics useful? The sensitive issue of the arbitrator's fees and expenses, notably institutional arbitration vs. ad hoc, will also be discussed.

- **Fabien Gélinas**, Associate Dean and Associate Professor of Law, McGill University, Canada; Former General Counsel, ICC International Court of Arbitration; Member, Task Force on the Revision of the ICC Rules

10.30 - 11.15 **Session with mock cases**

This session will feature short mock cases designed to hone participants' understanding of critical theoretical concepts while also emphasizing many practical aspects involved in the appointment of arbitrators: "In such a case, what would you do?"

11.15 - 11.30 *Coffee break*

MORNING (Cont'd)

11.30 - 12:15 **Debate on the mock cases and general discussion**

12.15 - 12.30 Discussion

12.30 - 14.15 *Lunch - Chez Francis, 7 Place de l'Alma, 75008 Paris (Tel: 01 47 20 86 83)*

AFTERNOON

Commencement of Proceedings

14.15 - 15.00 **General matters to be dealt with at the commencement of proceedings**

This session will focus on the general administrative matters that arbitrators have to deal with at the commencement of the proceedings in order to establish an orderly and efficient process. Such matters include interaction with the arbitral institution, routing of information involving communications with the tribunal and parties. The session will also explore whether these initial matters should be handled in person with the parties at a hearing or through correspondence. Participants will further review the importance and manner of keeping an accurate record of the proceedings.

- **Pierre Tercier**, Emeritus Professor, University of Fribourg, Switzerland; Honorary Chairman, ICC International Court of Arbitration
- **Fernando Mantilla Serrano**, Partner, Shearman & Sterling LLP, France; Member, ICC International Court of Arbitration; Member, Task Force on the Revision of the ICC Rules

15.00 - 16.15 **Topics to be raised with the parties at the commencement of the proceedings**

One of the most important responsibilities of an arbitrator is to help the parties focus on critical procedural matters early in the arbitral process. These procedural matters can have a great impact on the efficiency and speed of the arbitral process and include the following issues: jurisdiction; terms of reference; venue; severability of issues; governing law and procedural rules; language of the arbitration (documents, witnesses, interpreters); multiparty arbitrations; interim measures; selecting rules or standards of evidence (establish burdens of proof); initial disclosure of estimated number of witnesses and essence of witnesses' testimony; requests regarding discovery; disclosure of categories of essential documents each party believes it will use to prove its case; and appropriateness of dispositive motions and hearings on same.

- **Pierre Tercier**
- **Fernando Mantilla Serrano**

16.15 - 16.30 *Coffee break*

16.30 - 17.00 **Fixing a calendar**

When fixing a calendar one needs to prepare a briefing schedule and set topics for written submissions as well as organizing and scheduling hearings.

- **Pierre Tercier**
- **Fernando Mantilla Serrano**

17.00 - 17.30 **Discussion**

18.00 *Visit of the exhibition "Turner and the Masters" at the National Galleries of the Grand Palais (walking distance from ICC)*

MORNING

Conducting proceedings

09.30 - 10.00 **Establishing your authority over the parties, and the framework for the arbitration**

The arbitrator must establish his or her authority at the outset and create a suitable framework for the arbitration. This may pose particular challenges for young arbitrators or arbitrators dealing with experienced attorneys who attempt to control the process. Participants will learn the importance and manner of setting out the rules of the process at the very beginning. The session will also focus on issues related to the characteristics or behaviour of the parties, such as the desire to maintain a level playing field in order to create a balance between the parties (the temptation of helping the less experienced / weaker party), managing cultural differences, a party's refusal to participate, and dealing with recalcitrant parties.

- **Phillip Capper**, Partner, White & Case LLP, United Kingdom; Member, Task Force on the Revision of the ICC Rules; Associate Member, ICC Institute of World Business Law

10.00 - 10.30 **Session with mock cases**

10.30 - 10.45 *Coffee break*

10.45 - 11.15 **Conducting hearings**

Conducting hearings in an efficient and fair fashion is one of the most critical and challenging tasks faced by arbitrators. Because an arbitrator is not a judicial officer with state sanctioned authority to hold parties and advocates in contempt, maintaining control and decorum may pose a significant challenge for arbitrators. The experienced faculty will share their insights involving the questioning of witnesses or attorneys by arbitrators, maintaining control over examination of witnesses, deciding whether to request additional evidence or legal arguments not provided by the parties, and evaluating the need for the tribunal to appoint an expert.

- **Vera van Houtte**, Partner, Stibbe, Belgium; Vice-President, ICC International Court of Arbitration

11.15 - 12.00 **Session with mock cases**

12.00 - 12.30 **Debate on the mock cases and general discussion**

12.30 - 14.15 *Lunch - Chez Francis, 7 Place de l'Alma, 75008 Paris (Tel: 01 47 20 86 83)*

AFTERNOON

14.15 - 16.15 **Relations between arbitrators: mock arbitral tribunal**

The relationship and interaction between arbitrators is another important component of the arbitral process. Several demonstrations with a mock arbitral tribunal will be presented to explore issues pertaining to relations between arbitrators. The demonstrations and related discussion will touch on the following issues: consultation with co-arbitrators before and during the hearing; getting along with your co-arbitrators; trying to build consensus; dealing with conflicting personalities or styles; dealing with perceived bias or other perceived inability to properly function; notifying the institution or parties of problems; the particular responsibilities of the Chairman; truncated tribunals; and dealing with dissenting opinions.

- Chairman: **Serge Lazareff**
- Co-arbitrator 1: **Hilary Heilbron**, Barrister, Brick Court Chambers, United Kingdom
- Co-arbitrator 2: **Martin Hunter**, Barrister, Essex Court Chambers, United Kingdom; Member, ICC Commission on Arbitration

16.15 - 16.45 *Coffee break*

16.45 - 17.15 **Challenge and replacement of arbitrators**

Notably through the ICC International Court of Arbitration, but also through the National Courts (i.e. Asia).

- **Emmanuel Jolivet**, General Counsel & Deputy Director, ICC Dispute Resolution Services, Paris

17.15 - 17.30 Discussion

19.00 *Dinner at the restaurant Le Ciel de Paris – Montparnasse Tower*

MORNING

09.30 - 10.15 **Drafting enforceable awards**

Participants will learn the general guidelines and best practices pertaining to drafting enforceable awards.

- **Victoria Orlowski**, Counsel, ICC International Court of Arbitration, Paris
- **Pierre Mayer**, Partner, Dechert LLP, France ; Member, Task Force on the Revision of the ICC Rules, Council Member, ICC Institute of World Business Law

10.15 - 10.30 Discussion

10.30 - 10.45 *Coffee break*

10.45 - 11.15 **Working groups**

Participants will be given the opportunity to study a draft award before scrutiny by the ICC International Court of Arbitration. Each working group will be responsible for drafting part of the award and will make their comments as if they were ICC Court members.

- **José Ricardo Feris**, Counsel, ICC International Court of Arbitration, Paris
- **Victoria Orlowski**

11.15 - 12.00 **Scrutiny of the draft awards by the ICC International Court of Arbitration, and debate**

12.00 - 12.20 **Arbitrator immunity**

As in many legal endeavours, the world of arbitration involves issues related to an arbitrator's legal exposure. The faculty will discuss the nature and extent of arbitrator immunity and provide suggestions on what an arbitrator should do if he or she gets sued. The discussion will also touch upon matters relating to potential unauthorized practice of law issues.

- **Alexis Mourre**, Partner, Castaldi Mourre & Partners, France ; Vice-President, ICC International Court of Arbitration ; Council Member, ICC Institute of World Business Law

12.30 - 13.00 **General discussion and conclusions**

- **Phillip Capper**
- **Laetitia de Montalivet**, Director, ICC Events and the ICC Institute of World Business Law

13.00 *Lunch - Chez Francis, 7 Place de l'Alma, 75008 Paris (Tel: 01 47 20 86 83)*

End of the Masterclass